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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/295,690	04/21/1999	JEROME A MOUTON JR.	081862.P122	7482

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EXAMINER
FLEURANTIN, JEAN B

ART UNIT	PAPER NUMBER
2162	

MAIL DATE	DELIVERY MODE
09/30/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

		Application No.	**Applicant(s)**
		09/295,690	MOUTON ET AL.
Office Action Summary		**Examiner**	**Art Unit**	
		JEAN B. FLEURANTIN	2162	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>07 July 2008</u>.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-17</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-17</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

<center>DETAILED ACTION</center>

<center>*Continued Examination Under 37 CFR 1.114*</center>

1.   A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR

1.17(e), was filed in this application after final rejection. Since this application is eligible for continued

examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the

finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's

submission filed on 07/07/2008 has been entered.

        The following is the current status of claims:

        Claims 1-17 remain pending for examination.

<center>*Response to Arguments*</center>

        Applicant's arguments, filed 07/07/2008, with respect to the rejections of claims 1-17 under 35

U.S.C. 102(a) and 102(b) have been fully considered but, have been found persuasive only to the extent

that the prior art of record does not specifically discloses the limitations "*by chaining through one or more*

intermediate upgraded versions; repeatedly generating a revised update message having a next most

recent version format". However, the combination of APA in view of Hug discloses such limitations.

        Therefore, the arguments are not persuasive.

        Further, it is noted, during patent examination, the pending claims must be "given the broadest

reasonable interpretation consistent with the specification" Applicant always has the opportunity to amend

the claims during prosecussion and broad interpretation by the examiner reduces the possibility that the

claim, once issued, will be interpreted more broadly than is justified. In re Prater, 162 USPQ 541,550-51

(CCPA 1969). The court found that applicant was advocating … the impermissible importation of subject

matter from the specification into the claim. See also In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d

1023, 1027-28 (Fed. Cir. 1997) (The court held that the PTO is not required, in the course of prosecution,

to interpret claims in applications in the same manner as a court would interpret claims in an infringement

suit. Rather, the "PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the

words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into

account whatever enlightenment by way of definition or otherwise that may be afforded by the written

description contained in application's specification.") MPEP 2111.

        The broadest reasonable interpretation of the claims must also be consistent with the

interpretation that those skilled in the art would reach. In re Cortright, 165 F.3d 1353, 1359, 49 USPQ2d

1464, 1468 (Fed. Cir. 1999).

                        Claim Rejections - 35 USC § 103

        The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

        (a) A patent may not be obtained though the invention is not identically disclosed or described as set
        forth in section 102 of this title, if the differences between the subject matter sought to be patented and
        the prior art are such that the subject matter as a whole would have been obvious at the time the
        invention was made to a person having ordinary skill in the art to which said subject matter pertains.
        Patentability shall not be negatived by the manner in which the invention was made.

        Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant

background, admitted arts, APA ("APA") in view of USPNo. 5,806,078 issued to Hug et al., ("Hug").

        As per claim 1, APA discloses "a machine-implement method for upgrading a database" [i.e.,

database upgrading, previous versions; page 1, lines 18-19], comprising:

        "updating a database update message from a first version to an upgraded version" [i.e., version

database is a specific schema and the specific data in the structures, databases are embodied in a series

of versions, each with a changed schema and new data elements. A new version of the database is

generated from an old one by upgrading its schema and mapping its data to the new schema. Database

software generally support upgrading from any of several previous versions; see page 1, lines 13-19],

        "wherein updating comprises receiving an update message having a first version format; and

based on the update message until a final update message having an upgraded version format is

generated" [i.e., in a redundancy environment, upgrading is sometimes performed by upgrading a mirror

image database to the new version and then at the appropriate time switching to use the mirror image as

the primary database, process, upgrading is performed by receiving database update messages from a

previous version and mapping them into the schema of the new version, an empty database structure

conforming to the schema of the new version is created to accept these mappings; see page 2, lines 1-8];

and "applying the revised update message to the database to write an upgraded version of the

schema of the database" [i.e., databases are embodied in a series of versions, each with a changed

schema and new data elements; see page lines 15-16].

APA fails to explicitly disclose *chaining through one or more intermediate upgraded versions* (see

Hug col. 6, lines 38-41); *repeatedly generating a revised update message having a next most recent*

version format. However, Hug discloses *chaining through one or more intermediate upgraded versions;*

repeatedly generating a revised update message having a next most recent version format (see Hug col.

38—60). It would have been obvious to one ordinary skill in the art at the time the invention was made to

modify the method of APA by chaining through one or more intermediate upgraded versions; repeatedly

generating a revised update message having a next most recent version format as disclosed by Hug (see

Hug col. 6, 22-27). Such a modification would allow the method of APA to provide improved means for

comparing different document versions (see Hug col. 4, lines 55-56), therefore, improving the

performance of the method and apparatus for upgrading a database in a redundant environment by

release chaining.

As per claim 2, APA discloses "generating a revised update message having a next most recent

version format includes: receiving a first update message; and calling a next most recent version mapping

function to map contents of the first update message to generate a second update message" [i.e., each

with a changed schema and new data elements. A new version of the database is generated from an old

one by upgrading its schema and mapping its data to the new schema. Database software will generally

support upgrading from any of several previous versions; see page 1, lines 15-19; process, upgrading is

performed by receiving database update messages from a previous version and mapping them into the

schema of the new version, an empty database structure conforming to the schema of the new version is

created to accept these mappings; see page 2, lines 4-8].

As per claim 3, APA discloses "the update message includes a set of records for a database in the first version" [see page 1, lines 15-18].

As per claim 4, APA discloses "the set of records for the database in the first version is a complete set of records for the database" [see page 1, lines 15-18].

As per claims 5-8, the limitations of claims 5-8 are similar to claims 1-4, therefore, the limitations of 5-8 are rejected in the analysis of claims 1-4, and these claims are rejected on that basis.

As per claims 9-12, the limitations of claims 9-12 are similar to claims 1-4, therefore, the limitations of 9-12 are rejected in the analysis of claims 1-4, and these claims are rejected on that basis.

As per claims 13-17, the limitations of claims 13-17 are similar to claims 1-4, therefore, the limitations of 13-17 are rejected in the analysis of claims 1-4, and these claims are rejected on that basis.

II.) **Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPNo. 5,806,078 issued to Hug et al., ("Hug") in view of applicant background, admitted arts, APA ("APA").**

As per claim 1, Hug discloses "a machine-implemented method" [see col. 79, lines 5-23], comprising:

"updating a database update message from a first version to an upgraded version by chaining through one or more intermediate upgraded versions" [i.e., version data file 40 and the difference data file 42 to reflect the changes in the subsequent version col. 6 lines 38-41],

"wherein updating comprises receiving an update message having a first version format" [i.e., regenerating version (20); see col. 5, lines 38-46]; and "repeatedly [i.e., iteratively repeat; see col. 5, lines 58-60] generating a revised update message having a next most recent version format based on the update message until a final update message having the upgraded version format is generated" [see col.

5, lines 48-56]; and "applying the revised update message to the database" [i.e., reflect version changes; see col. 5, line 67 to col. 6, line 6].

Hug fails to explicitly disclose the claimed upgrading the <u>schema</u> of a database; to write an upgraded version of the <u>schema</u> of the database. However, APA discloses upgrading the <u>schema</u> [see APA page 1, lines 15-18]. It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the method of Hug by upgrading the schema as disclosed by APA (see APA page 1, lines 16-18). Such a modification would allow the method of Hug to improve the performance of the method and apparatus for upgrading a database in a redundant environment by release chaining.

As per independent claims 5, 9 and 13 the limitations of independent claims 5, 9 and 13 are similar to the independent claim 1, therefore, the limitations of independent claims 5, 9 and 13 are rejected in the analysis of independent claim 1, and these claims are rejected on that basis.

As per claims 6-8, the limitations of claims 6-8 are similar to claims 1, 5, 9 and 13, therefore, the limitations of 6-8 are rejected in the analysis of claims 1, 5, 9 and 13, and these claims are rejected on that basis.

As per claims 10-12, the limitations of claims 10-12 are similar to claims 1, 5, 9 and 13, therefore, the limitations of 10-12 are rejected in the analysis of claims 1, 5, 9 and 13, and these claims are rejected on that basis.

As per claims 14-17, the limitations of claims 14-17 are similar to claims 1, 5, 9 and 13, therefore, the limitations of 14-17 are rejected in the analysis of claims 1, 5, 9 and 13, and these claims are rejected on that basis.

Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Candelaria et al., USPTNo. 5,682,513 relates to backup copy performance.

CONTACT INFORMATION

2.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEAN B. FLEURANTIN whose telephone number is 571-272-4035. The examiner can normally be reached on 7:05 to 4:35.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN E BREENE can be reached on 571-272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/JEAN B. FLEURANTIN/

Primary Examiner, Art Unit 2162